

Yekeen Bello v. Bank of America Corporation, Civil Action No. AMD 03-CV-493  
Defendant's Memorandum in Support of its Motion for Summary Judgment  
**EXHIBIT 2**  
Affidavit of Phyllis Burkhart

**AFFIDAVIT OF PHYLLIS BURKHART**

I, Phyllis Burkhart, do hereby depose and swear as follows:

1. I am a witness of lawful age. I have personal knowledge of and am competent to testify to the matters stated in this affidavit.

2. I have been employed by Bank of America (the "Bank"), or one of its predecessor banks, for approximately 40 years. I am presently the Supervisor of Reconciliation and Reject Re-Entry for the Twilight shift. I have held this position for approximately 10 years.

3. Reconciliation and Reject Re-Entry is an area within Check Processing. Check Processing is responsible for processing within a short turn-around time frame all of the checks that are received by the Bank's Branches and pre-encoded customers.

4. Most checks can be processed automatically in large machines that read and then sort the checks. However, some checks cannot be read by the machines for a variety of reasons, mainly due to the condition of the check such as being folded, too crumpled, or have bad MICR printing. Those rejected checks are sent to Reject Re-Entry. The first thing Reject Re-Entry does is attempt to recondition the checks by going through each bundle and fixing the problems with those checks, such as for example unfolding a check. The check are then run through the transporter and then returned to Reject Re-Entry where each check is sent, check-by-check, through a stripping machine which places a strip on the bottom of the check that can then be micro-encoded with the necessary information from the check to allow it to be processed. Checks that cannot be sent through the stripping machine are placed in a clear envelope. The operation has 5 stripping machines. Reconciliation is the on-line balancing of customer accounts. In order to do this, the associate must locate the error by pulling rejected checks and source tapes and then must balance the account according to the error.

5. After Mr. Bello was transferred to my supervision from Transit, we attempted to train Mr. Bello in various functions including, sorter prep, reject breakdown, and reconciliation, in an attempt to identify work for which he was suitable. However, in these functions, Mr. Bello could not learn his duties and had to ask the same questions repeatedly, had repeated errors, and was unable to attain an acceptable output. For example, Mr. Bello was trained on the simplest form of reconciliation, Pocket 8s, but could not retain instructions and was never able to attain an acceptable output. Mr. Bello was finally moved to Reject Re-Entry where he was assigned two primary functions: working the stripping machine, which places a blank strip on the bottom of a check that can no longer be read electronically so that it can be encoded with the appropriate information, and monitoring the printers in the printing room to make sure they were clean, had printer tape, and filled with paper.

6. Mr. Bello's job performance in these functions did not fully meet our expectations. For example, Mr. Bello insisted on changing the printer ribbons at fixed intervals whether or not they were fully used, despite being told to change the ribbons only when the ribbons in the printer was fully used. In addition, Mr. Bello's productivity was often below an acceptable level. I would counsel him on the need to increase his speed, and he would do so for a while and then would slow down again. He would also pick and choose among the bundles of checks that needed to be stripped to select the smaller bundles, leaving the larger ones for the other associates. He was counseled about the need to take first bundles in the tray regardless of its size.

7. In January 2000, I approached Mr. Bello to talk with him again about this behavior. Mr. Bello became belligerent and stated, in front of other associates, that this is a democracy and a free country, indicating his belief that he did not have to follow my directions. I then asked Mr. Bello to accompany me to Ms. Broughman's office, but he refused. Thus, I called Ms.

Broughman and asked her to come to our area, which she did, and asked both of us to accompany her to her office to discuss the issue. There, Mr. Bello was counseled again about not picking and choosing among the bundles of checks, the need to increase his productivity and to pick up his pace, and not leaving his work area. Mr. Bello was given a warning for this conduct as well as his insubordinate behavior when I attempted to discuss these issues with him. This incident and the counseling was documented. However, Mr. Bello refused to sign the documentation. It is signed by Ms. Broughman and myself. A true and accurate copy of this documentation is attached hereto as Exhibit A.

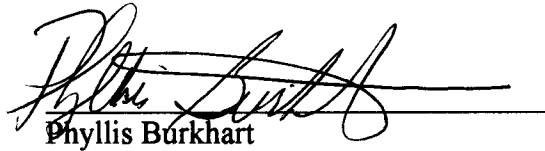
8. In March 2002, I complete a performance appraisal for Mr. Bello and discussed it with him. Mr. Bello refused to sign it the appraisal. A true and accurate copy of this performance appraisal is attached hereto as Exhibit B.

9. When Mr. Bello brought me a note from his doctor indicating that he was not to lift over 25 pounds for a month, I told Mr. Bello not to lift any boxes of paper. Mr. Bello's other work, including his work on the stripping machine, did not require him to lift anything even close to 25 pounds. Mr. Bello never told me that he was restricted from working the stripping machine or that his injury was caused or aggravated by his work on the stripping machine.

10. In May 2002, I was informed that the number of associates in Twilight Reject Re-Entry was to be reduced by one part time associate. In order to determine who should be reduced, Ms. Broughman and I ranked the 12 associates in Twilight Reject Re-Entry based on their skills and performance in eight categories: accountability; client focus; communication; flexibility; initiative; interpersonal skills; teamwork; and technical/job knowledge. These categories had further subcategories. Plaintiff ranked lower than all of his fellow associates in each category. A true and accurate copy of our ranking is attached hereto as Exhibit C. Mr.

Bello ranked lower than each of the other 11 associates in each category. Accordingly, Mr. Bello was selected for layoff.

11. I never told Mr. Bello that he was being retired because of his age or said anything like that to Mr. Bello. In fact, I am older than he is. I was born on May 5, 1942.



Phyllis Burkhart

Pursuant to 28 U.S.C. Section 1746, I declare under the penalty of perjury that the foregoing is true and correct. Executed this 12th day of November, 2003.



Phyllis Burkhart

## **EXHIBIT A**

Date: January 12, 2000

TO: Associate's File  
Yekeen Bello

On January 12, 2000 Yekeen Bello at 8:15 P.M. was approached by his supervisor (Phyllis Burkhart) for picking and choosing work that needed to be done on the bantec strippers. Bello has a tendency to take the smaller bundles of work and leave the larger ones for the other associates. He was communicated to once before about this issue. The procedure for the department is to take the first bundle in the tray and work backwards to the last.

At this point Mr. Bello was boisterous on the floor in the department in front of numerous associates. His statement was that this is a democracy and a free country( in other words he will do what he pleases). The supervisor(Phyllis Burkhart) requested him to stop giving her a hard time and to go back to work. He repeated his statement a second time. At that time I(Phyllis Burkhart) requested that we go down to the managers office. Mr. Bello stated that he was not going.

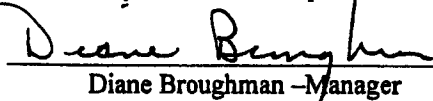
The Manager (Diane Broughman) was paged to come to the Reconciliation Area. She arrived in the work area and was given a summary of what had occurred. It was then requested that Mr. Bello and myself (Phyllis Burkhart) accompany her to the sixth floor managers office and discuss the issue.

During the counseling session Mr. Bello was informed that this is not the first time this was brought to his attention about picking and choosing his work load. He was also counseled prior to this incident that his productivity was below an acceptable level. Mr. Bello, on numerous occasions, has been counseled by the supervisor about not leaving the work area; that during critical times and that he needed to pick up his pace. Mr. Bello has a problem with understanding department procedures and following through with them.

At this time Mr. Bello is being place on a first warning for insubordination to a supervisor and refusing to perform what was asked of him. Any further occurrences of insubordination or refusing to follow workload procedures will result in further disciplinary action.

  
Phyllis Burkhart-Supervisor

1-12-00  
Date

  
Diane Broughman -Manager

1-12-00  
Date

\_\_\_\_\_  
Yekeen Bello-Associate

\_\_\_\_\_  
Date

*Associate refused to sign - 1-12-00*

## **EXHIBIT B**



## MANAGING YOUR PERFORMANCE

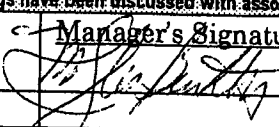
<b>Associate Name</b> Yekeen Bello		<b>Social Security #</b> 579-74-2913		<b>Department Name</b> REJECT RE-ENTRY		<b>Date Hired</b> 11-25-1991																																																																																	
<b>Position Title</b> Reject-Rpair				<b>Band</b>		<b>Date In Present Position</b> 3-28-2002																																																																																	
<b>Performance Review Period</b>		<b>From (Mo/Yr):</b> January-2002			<b>To (Mo/Yr):</b> March-2002																																																																																		
<b>PERFORMANCE PLAN</b>																																																																																							
<b>KEY OBJECTIVES AND MEASUREMENT CRITERIA</b>				<b>RESULTS</b> = Far Exceeds      E = Exceeds M = Meets expectations      B = Below expectations																																																																																			
<b>PRODUCTIVITY:</b> <b>RANK 30%</b>  <table border="1"> <thead> <tr> <th><u>Per Hour Rate</u></th> <th><u>Keying</u></th> <th><u>Mending</u></th> </tr> </thead> <tbody> <tr> <td>FE 10000+</td> <td>3500 +</td> <td>1700 +</td> </tr> <tr> <td>E 8000 - 9999</td> <td>2000 - 3499</td> <td>1400 - 1699</td> </tr> <tr> <td>M 6000 - 7999</td> <td>1500 - 1999</td> <td>1100 - 1399</td> </tr> <tr> <td>B 5,999 or less</td> <td>1499 or less</td> <td>1099 or less</td> </tr> </tbody> </table>				<u>Per Hour Rate</u>	<u>Keying</u>	<u>Mending</u>	FE 10000+	3500 +	1700 +	E 8000 - 9999	2000 - 3499	1400 - 1699	M 6000 - 7999	1500 - 1999	1100 - 1399	B 5,999 or less	1499 or less	1099 or less	<table border="1"> <thead> <tr> <th>Pass 1</th> <th>Pass 2</th> <th>Keying</th> <th>Reconditioning</th> <th>Stripping</th> </tr> </thead> <tbody> <tr><td>Jan</td><td></td><td></td><td></td><td>B</td></tr> <tr><td>Feb</td><td></td><td></td><td></td><td>B</td></tr> <tr><td>Mar</td><td></td><td></td><td></td><td></td></tr> <tr><td>Apr</td><td></td><td></td><td></td><td></td></tr> <tr><td>May</td><td></td><td></td><td></td><td></td></tr> <tr><td>Jun</td><td></td><td></td><td></td><td></td></tr> <tr><td>Jul</td><td></td><td></td><td></td><td></td></tr> <tr><td>Aug</td><td></td><td></td><td></td><td></td></tr> <tr><td>Sept</td><td></td><td></td><td></td><td></td></tr> <tr><td>Oct</td><td></td><td></td><td></td><td></td></tr> <tr><td>Nov</td><td></td><td></td><td></td><td></td></tr> <tr><td>Dec</td><td></td><td></td><td></td><td></td></tr> </tbody> </table> <p style="text-align: right;">RATING: <u>15%</u></p> <p>Bello needs to pick up his pace on stripping the work. When it is brought to his attention he will pick up his speed.</p>				Pass 1	Pass 2	Keying	Reconditioning	Stripping	Jan				B	Feb				B	Mar					Apr					May					Jun					Jul					Aug					Sept					Oct					Nov					Dec				
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<b>QUALITY:</b> <b>RANK = 25%</b>  <ul style="list-style-type: none"> <li>Incorrect information keyed or verified</li> <li>Processing under wrong sort type</li> <li>Ending entry too soon</li> <li>Improper placement of strips</li> <li>Work out of order</li> <li>Any error that causes impact to customers or Other departments.</li> </ul> <p><u>Total Errors</u>  FE = 0  E = 1  M = 2  B = 3 +</p>				<table border="1"> <thead> <tr> <th>Month</th> <th># Errors</th> <th>Rate</th> </tr> </thead> <tbody> <tr><td>Jan</td><td>2</td><td>M</td></tr> <tr><td>Feb</td><td>2</td><td>M</td></tr> <tr><td>Mar</td><td></td><td></td></tr> <tr><td>Apr</td><td></td><td></td></tr> <tr><td>May</td><td></td><td></td></tr> <tr><td>Jun</td><td></td><td></td></tr> <tr><td>Jul</td><td></td><td></td></tr> <tr><td>Aug</td><td></td><td></td></tr> <tr><td>Sept</td><td></td><td></td></tr> <tr><td>Oct</td><td></td><td></td></tr> <tr><td>Nov</td><td></td><td></td></tr> <tr><td>Dec</td><td></td><td></td></tr> </tbody> </table> <p style="text-align: right;">RATING: <u>15%</u></p> <p>Has been told several times about stripping the work upside down. Also has been told that the strips were too short which causes a problem on the transporters.</p>				Month	# Errors	Rate	Jan	2	M	Feb	2	M	Mar			Apr			May			Jun			Jul			Aug			Sept			Oct			Nov			Dec																																											
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<b>JOB KNOWLEDGE &amp; ABILITY</b> <b>RANK = 20%</b>  <ul style="list-style-type: none"> <li>Ability to process work on Bancotec Transport, achieving productivity goals for running Pass 1 and Pass 2</li> <li>Perform reconditioning of items prior to capture On transporter.</li> <li>Perform stripping of rejects</li> <li>Ability to perform keying functions with knowledge of document specifications for correcting rejected documents.</li> <li>Ability to detect fraudulent items.</li> <li>Ability to perform daily hardware maintenance</li> <li>Encoding Free and Missing Items</li> <li>Process Pocket 8 items</li> <li>Maintenance/cleaning of printers.</li> <li>Setting up off-line work.</li> </ul>				<p>Bello can help with processing pocket 8 rejects, and encode checks from the free and missing report. Does make service calls to have the equipment fix. Have made repairs to the check menders when needed. Has maintained the cleaning of the printers prior to January 2002.</p> <p style="text-align: right;">Rating <u>10%</u></p>																																																																																			

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## MANAGING YOUR PERFORMANCE

KEY OBJECTIVES AND MEASUREMENT CRITERIA	RATING SCALE FE = Far Exceeds M = Meets Expectations E = Exceeds B = Below Expectations
<b>TRUST &amp; TEAMWORK</b> <b>RANK = 10%</b> <ul style="list-style-type: none"> <li>▪ Accepts new challenges</li> <li>▪ Performs multiple job functions</li> <li>▪ Shares relevant job information</li> <li>▪ Maintains confidentiality.</li> <li>▪ Responds promptly and courteously to others.</li> <li>▪ Cross trains in other areas and provides support when necessary.</li> <li>▪ Displays positive behavior.</li> <li>▪ Participates in Team Meetings.</li> <li>▪ Works with team to identify problems and improve work processes.</li> <li>▪ Exhibits a commitment to the Bank</li> <li>▪ Performs regular "housekeeping" of personal work space</li> <li>▪ Maintains proper dress code</li> </ul>	<p>Bello could be more courteous to the associates within the department. We had tried to cross train Bello on other functions within the department, but were unable to succeed. Could improve on his housekeeping around his work area.</p> <p style="text-align: right;">Rating--5%</p>
<b>COMMUNICATIONS</b> <b>RANK = 10%</b> <ul style="list-style-type: none"> <li>▪ Keeps management informed and knows when to escalate any known problems/situations.</li> <li>▪ Reports safety hazards to Management</li> <li>▪ Maintains daily production logs.</li> <li>▪ Reports system/hardware problems, places service calls and records information on Problem Log.</li> </ul>	<p>Does inform Management of problems. Does make service calls for Maintenance.</p> <p style="text-align: right;">Rating-----10%</p>
<b>LEADERSHIP</b> <b>RANK 5%</b> <ul style="list-style-type: none"> <li>▪ Does not abuse attendance guidelines.</li> <li>▪ Reports to work on time</li> <li>▪ Begins work at scheduled time.</li> <li>▪ Follows proper procedures for notifying Immediate supervisor of absence or lateness.</li> </ul>	<p>Had a problem with his attendance 2001</p> <p style="text-align: right;">Rating-----4%</p>
<b>PERSONAL GOALS &amp; DEVELOPMENT</b>	

### COMMENTS:

Performance objectives, measurement criteria, duties, and ratings have been discussed with associate			
<u>Associate's Signature</u>	<u>Date</u>	<u>Manager's Signature</u>	<u>Date</u>
			3-28-02

*Associate refuses to sign.*

## **EXHIBIT C**

## Ranking - Twilight Reject Repair

Initials	JB	RC	DJ	LN	YB	JM	SR	DR	RC	TJ	AJ	PO
Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Accountability												
Holds self and others accountable for meeting deadlines, goals, and objectives	7	8	8	9	4	10	10	9	8	7	7	7
Takes responsibility for outcomes and making decisions	7	8	8	9	5	10	10	9	7	8	7	7
Accepts responsibility for own mistakes	7	8	7	9	4	10	10	9	7	8	6	7
Average	7	8	8	9	4	10	10	9	7	8	7	7
Client Focus												
Views every action and decision in terms of its impact on the client and how it adds to BankAmerica's competitive advantage in the marketplace	7	7	7	7	4	8	8	7	6	6	6	6
Demonstrates unwavering commitment to excellence in delivering services, products, and information valued by our clients	7	6	7	7	4	8	8	7	6	6	7	6
Developes a collaborative partnership among BankAmerica businesses and service units to deliver rapid, efficient and seamless service	7	6	7	7	4	8	8	7	6	6	6	6
Demonstrates an understanding of the client's current conditions and evolving needs and introduces ideas, products, and services in a manner which anticipates their needs and exceeds their expectations	7	7	7	7	4	8	8	7	6	6	6	7
Searches continually for ways to increase client satisfaction, trust and confidence	7	6	7	7	4	8	8	7	6	6	7	6
Ensures that the voice of the client is incorporated in product development and service delivery	7	7	7	7	4	8	8	7	7	6	7	7

## Ranking - Twilight Reject Repair

Initials	JB	RC	DJ	LN	YB	JM	SR	DR	RC	TJ	AJ	PO
Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Seeks feedback from clients and uses it to improve service quality	7	7	7	7	4	8	8	7	7	6	6	7
Average	7	7	7	7	4	8	8	7	6	6	6	6
Communication												
Conveys information with clarity and ease, both orally and in writing	7	7	7	8	4	9	9	7	6	6	6	7
Tailors message to the audience and delivers it using the appropriate medium (e.g., in person, phone, e-mail, memo)	7	7	7	8	4	9	9	7	6	6	6	6
Listens effectively; seeks first to understand and then to be understood	7	7	8	8	4	9	9	7	6	7	7	7
Keeps others informed	7	7	8	8	5	9	9	7	6	7	7	7
Gives specific and constructive feedback	7	7	7	8	5	9	9	7	6	7	7	6
Average	7	7	7	8	4	9	9	7	6	7	7	7
Flexibility												
Adjusts behavior quickly and effectively to meet a goal, overcome an objection, or resolve a concern	7	8	8	8	4	9	9	8	7	7	6	6
Adapts to changing and often ambiguous circumstances	7	7	7	8	4	9	9	8	7	7	6	6
Handles day-to-day challenges of work in an adaptive and confident manner	7	8	8	8	4	9	9	8	7	7	7	7
Average	7	8	8	8	4	9	9	8	7	7	6	6
Initiative												
Champions new initiatives within and beyond the scope of own job	7	8	7	8	4	9	9	8	7	7	7	6

## Ranking - Twilight Reject Repair

Initials	JB	RC	DJ	LN	YB	JM	SR	DR	RC	TJ	AJ	PO
Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Seeks out new work challenges	7	8	8	8	4	9	9	8	6	7		6
Seeks opportunities to help others before being asked	7	8	8	8	4	9	9	8	7	7		6
Average	7	8	8	8	4	9	9	6	7	7		6
Interpersonal Skills												
Treats others (e.g. employees, peers, managers, and clients) with the utmost respect and dignity	7	7	7	8	4	9	9	8	7	7		7
Puts people at ease; relates to others in an open, accepting manner	8	7	8	8	4	9	9	8	7	7		7
Shows sincere interest in others and their concerns	8	8	7	8	4	9	9	8	7	7		7
Helps others in need; uses diplomacy and tact to protect their self-esteem	7	7	7	8	4	9	9	8	6	7		7
Average	8	7	7	8	4	9	9	8	7	7		7
Teamwork												
Promotes teamwork effectiveness by facilitating and building on the ideas of others	7	8	8	8	4	9	9	6	7	7		6
Shares information and expertise to achieve desired results	7	8	8	8	4	9	9	6	7	7		6
Works together as opposed to separately or competitively; doesn't have to do it all alone	7	8	8	8	4	9	9	6	7	7		6
Facilitates smooth interactions across organizational units; develops a collaborative partnership among BankAmerica businesses and service units	7	8	8	8	4	9	9	6	7	7		6
Average	7	8	8	8	4	9	9	6	7	7		6

## Ranking - Twilight Reject Repair

Initials	JB	RC	DJ	LN	YB	JM	SR	DR	RC	TJ	AJ	PO
Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Technical/Job Knowledge												
Demonstrates knowledge of assigned job function	8	7	8	9	6	9	10	8	7	7	7	7
Possesses up-to-date knowledge of job procedures and processes related to their job function	8	7	8	9	5	9	10	8	7	7	7	7
Has an understanding of how their job function interrelates with others within the department	8	7	8	9	5	9	10	8	7	7	7	7
Average	8	7	8	9	5	9	10	8	7	7	7	7
Far Exceed: 9 to 10												
Exceed: 6 to 8												
Met: 3 to 5												
Does Not Meet: 0 to 2												